

Status of the Claims

Claims 1-62 are currently pending in the subject application. By this amendment, Claims 1 and 5 have been amended. Claims 25-62 have been withdrawn as directed to non-elected inventions and are canceled in this Amendment without prejudice or disclaimer. Upon entry of this Amendment, Claims 1-24 will be pending in the subject application.

Claims 1 and 5 have been amended to define the invention in another form. Claim 1 has been amended to add the element of “expelling a metered portion of the sample through the capillary stop.” Support for this amendment may be found at paragraph [0175], FIG. 15 and elsewhere in the subject application. Claim 5 has been amended to recite “an analysis location” beyond the capillary stop. Support for this amendment may be found in items 153, 154 and 165 of FIG. 15, the corresponding text, and elsewhere in the subject application. No new matter has been added.

April 28, 2008 Examiner Interview

Applicants would like to thank Examiner Alexander for the personal interview conducted on April 28, 2008. In compliance with M.P.E.P. § 713.04, the substance of that interview is reflected in the April 30, 2008 Interview Summary and in the following remarks.

During the interview, Applicant’s representative asserted that Lea et al. fails to teach or suggest a capillary stop or a sealing element that slides “in a way that displace any excess fluid sample away from the orifice.” No agreement was reached on these points. The Office did agree that if Applicant were to indicate there is fluid flow after the capillary stop, Lea et al. could be overcome, and the Office would update its search.

Rejections Under 35 U.S.C. §§102(b) and 103(a)

Claims 1-12 and 14-24 stand rejected under 35 U.S.C. §102(b) as being anticipated by Lea et al. (US2002/0019062). Claim 13 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Lea et al. Applicants respectfully traverse these rejections in view of amended Claims 1 and 5.

The invention of independent Claim 1 is a method of sealing a fluid sample collection device, comprising loading a fluid sample collection device with a fluid sample, the device

comprising a housing having at least one substantially planar surface that includes an orifice in fluid communication with an internal fluid sample holding chamber which terminates at an internal capillary stop. A sealing element is slidably moved over at least a portion of the substantially planar surface in a way that displaces any excess fluid sample away from the orifice, seals the fluid sample within the holding chamber, and inhibits the fluid sample from prematurely breaking through the internal capillary stop. A metered portion of the sample is then expelled through the capillary stop.

As discussed in the Examiner Interview, Applicants submit that Lea et al. fails to teach or suggest expelling a metered portion of a sample through a capillary stop as required by Claim 1. Accordingly, Applicants assert that Claim 1 and the claims depending therefrom are novel over Lea et al., and the allowance thereof is respectfully requested. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) *cert. denied*, 484 U.S. 827 (1987) (indicating a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference).

Similarly, independent Claim 5 recites a fluid sample collection device, comprising a housing comprising at least one substantially planar surface and at least one sealing element, wherein the substantially planar surface has an orifice that is in fluid communication with an internal fluid sample holding chamber which terminates at an internal capillary stop. The sealing element is slidably movable over at least a portion of the substantially planar surface in a way that displaces any excess fluid sample away from the orifice, seals the fluid sample within the holding chamber, and inhibits the fluid sample from prematurely breaking through the capillary stop to an analysis location. Thus, the device of Claim 5 requires an analysis location beyond the capillary stop.

Applicants submit that Lea et al. fails to teach or suggest the device of Claim 5 having an analysis location beyond the capillary stop. Accordingly, Applicants assert that Claim 5 and the claims depending therefrom are novel over Lea et al., and the allowance thereof is respectfully requested.

Conclusion

For the foregoing reasons, the allowance of pending Claims 1-24 is respectfully requested. Should the Examiner have any questions regarding this response or the application in general, the Examiner is urged to contact the Applicants' attorney, Justin L. Krieger, by telephone at (202) 625-3858. All correspondence should continue to be directed to the address given below.

Respectfully submitted,

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